

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2728 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

RASHIDBHAI DAUDBHAI MEMAN

Versus

STATE OF GUJARAT

Appearance:

MR PH PATHAK for Petitioner
Mr.V.B.Gharania, ASSTT. GOVERNMENT PLEADER
for Respondent No. 1
MR BS PATEL for Respondent No. 2

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 18/11/98

ORAL JUDGEMENT

By means of this petition, the petitioner has sought for quashing of termination order dated 18.3.93 passed by the respondent no. 2 Executive Engineer, Narmada Main Canal Laboratory Vibhag, Administrative office, Baroda.

2. The petitioner was working as a labourer since 1980 under the control of respondent no. 2. After the Government resolution dated 28.8.89, the petitioner was granted the pay scale of Rs. 750-940 and he remained as a daily wager. When the petitioner made a demand to grant him the benefit of Government Resolution as he had completed 10 years of service, the respondent no.2 passed the termination order and his services were terminated.

3. The respondent no. 2 filed his affidavit-in-reply wherein it is stated that the petitioner was a daily rated employee and hence no fundamental right whatsoever of the petitioner was infringed as alleged by the petitioner. The respondent no. 2 directed the Deputy Engineer to terminate the services of the petitioner and that he received an order from the higher officer and passed the order on 17.3.93. He immediately ordered the Deputy Engineer to carry out the same and to serve on the petitioner on 18.3.93, but the petitioner refused to accept the same.

4. The learned counsel for the petitioner submitted that the order of termination of the petitioner's services is not punitive in nature, but the petitioner's services have been terminated by the impugned order. Had it been a punitive order, a regular inquiry was required to be launched against the petitioner and since no inquiry was initiated against the petitioner, the services of the petitioner were terminated and as such, the order passed by the authority is arbitrary, illegal, void ab initio and requires to be quashed and set aside. In support of his contention, he produced a photostat copy of the decision of the Supreme Court in the case of M.C.D. vs. Praveen Kumar Jain and others reported in 1988(2) LLJ, 64.

5. I have heard the learned Assistant Government Pleader Mr. V.B.Gharania. He has supported the impugned judgment and has submitted that the petition requires to be dismissed.

6. I have also perused the relevant record of the case. It is true that in the present case, the services of the petitioner were terminated by the impugned order dated 17.3.93. According to the respondents, the petitioner was working as a daily rates workman. When the petitioner had demanded the benefit of the Government Resolution dated 17.10.88, the services of the petitioner were terminated. The facts and circumstances stated by the learned counsel for the

petitioner are entirely different inasmuch as the workman in that case was discharged and it was stated on behalf of the department in that case that the petitioner of that case had committed a mischief in adding his name and one other person in the list which was forwarded for regularisation in the department. But in the instant case, there is no such allegation that the petitioner had committed any mischief and due to that mischief, the petitioner's services were terminated. Even then without any cause, the petitioner's services had been terminated by the respondent no.2 on the direction of superior officer when the petitioner requested for the benefit of the Government Resolution dated 17.10.88 though the petitioner had served the department for more than 12 years. Thus, the termination order is arbitrary and is not sustainable in the eye of law. The petitioner is entitled not only to continuity of service, but he is also entitled for absorption and regularisation of his services in the cadre of class IV employee.

6. The learned Assistant Government Pleader could not in any manner support the impugned order. In the facts and circumstances, this petition deserves to be allowed and the petitioner is entitled to be reinstated in service. So far as back wages are concerned, the petitioner has not worked after termination order and therefore, he is not entitled for back wages.

7. Accordingly the petition is allowed in part. The respondent no. 2 is directed to reinstate the petitioner to his original post of class IV employee with continuity of service, but without back wages. The respondent no.2 is further directed to forthwith absorb and regularise the petitioner as regular class IV employee. Rule is made absolute accordingly with no order as to costs.

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